



# **STATE MINING AND GEOLOGY BOARD**

## **EXECUTIVE OFFICER'S REPORT**

**For Meeting Date: September 9, 2010**

**Agenda Item No. 5: Approval of an Interim Financial Assurance Amount for Santa Paula Rock (CA Mine ID #91-56-XXXX), Santa Paula Rock, Gravel & Sand, LLC (Operator), Mr. Al Bitetti (Agent), City of Santa Paula.**

**INTRODUCTION:** The State Mining and Geology Board (SMGB) acts as the lead agency for the City of Santa Paula, pursuant to the Surface Mining and Reclamation Act of 1975 (SMARA, Public Resources Code (PRC) Section 2710, et seq.). SMARA requires that each surface mining operation maintain a financial assurance in an amount adequate to reclaim, in accordance with the requirements of an approved reclamation plan, all lands disturbed by the mining operation. SMARA lead agencies are required to annually review the financial assurance amounts for each surface mining operation, and adjust the amount, as necessary, to account for new land disturbed, inflation, or land reclaimed. In any event, the lead agency must ensure that the approved amount is adequate to reclaim the mine site in accordance with the approved reclamation plan (PRC Sections 2770 and 2773.1, and California Code of Regulations (CCR) Section 3804).

**STATUTORY AND REGULATORY AUTHORITY:** Financial assurance cost estimate (FACE) adjustment requirements are discussed under SMARA, and fall within the SMGB's regulations and guidelines. Lead agencies are required to ensure that financial assurances for reclamation are sufficient pursuant to Division 2, Chapter 9, Article 5 of PRC Section 2770(d) which states:

*"The lead agency's review of reclamation plans submitted pursuant to subdivision (b) or of financial assurances pursuant to subdivision (c) is limited to whether the plan or the financial assurances substantially meet the applicable requirements of Sections 2772, 2773, and 2773.1, and the lead agency surface mining ordinance adopted pursuant to subdivision (a) of Section 2774, but, in any event, the lead agency shall require that financial assurances for reclamation be sufficient to perform reclamation of lands remaining disturbed. Reclamation plans or financial assurances determined to substantially meet these requirements shall be approved by the lead agency for purposes of this chapter. Reclamation plans or financial assurances determined not to substantially meet these requirements shall be returned to the operator within 60 days. Reclamation plans or financial assurances determined not to substantially meet these requirements shall be returned to the operator within 60 days. The operator has 60 days to revise the plan or financial assurances to*



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*address identified deficiencies, at which time the revised plan or financial assurances shall be returned to the lead agency for review and approval.”*

In addition, PRC Section 2773.1(a) states:

*“...Lead agencies shall require financial assurances of each surface mining operation to ensure reclamation is performed in accordance with the surface mining operation's approved reclamation plan, as follows:*

*(3) The amount of financial assurances required of a surface mining operation for any one year shall be adjusted annually to account for new lands disturbed by surface mining operations, inflation, and reclamation of lands accomplished in accordance with the approved reclamation plan.”*

Furthermore, the SMGB's regulations pursuant to Article 11 of the CCR Section 3804, Calculation of Financial Assurance Amount, states:

*“(a) The Financial Assurance Amount shall be calculated as prescribed in Public Resources Code Section 2773.1 and based on:*

- (1) an analysis of the physical activities and materials necessary to implement the approved reclamation plan;*
- (2) the lead agency's unit costs, or costs for third party contracting, for each of these activities, if applicable;*
- (3) the number of units of each of these activities, if applicable;*
- (4) a contingency amount not to exceed 10% of the reclamation costs.*

*(b) The calculated amount should not include the cost of completing mining of the site.*

*(c) In order for the lead agency or the Department of Conservation to determine what annual adjustments, if any, are appropriate to the Financial Assurance Amount, the operator shall annually submit to the lead agency a revision of the written calculation required under Section 3804(a).”*

**BACKGROUND:** On September 29, 2009, the U.S. Army Corps of Engineers (USACE) awarded a contract for the Santa Paula Creek Improvements Sediment Removal Project to Rick Garcia Construction Company (RGCC). Such contract involves the removal of approximately 330,000 cubic yards of accumulated alluvial material from Santa Paula Creek for the purposes of restoring hydraulic capacity and fish passage to the engineered channel and decreasing flood risk to the adjacent community. On October 29, 2009, the City of Santa



Paula granted a Temporary Use Permit (TUP) to the Hawkstone Company doing business as Santa Paula Rock, Gravel & Sand, LLC (Santa Paula Rock, Operator) to stockpile, screen, sort and sell alluvial material excavated from Santa Paula Creek by RGCC. The TUP allows for the processing and selling of approximately 330,000 cubic yards of aggregate material from the current Santa Paula Rock site over a period of two years.

In February and April of 2010, the SMGB office received copies of correspondence from the law office of Stoel Rives, LLP to the Office of Mine Reclamation (OMR), alleging illegal surface mining operations were occurring at the Santa Paula Rock site, and requesting that OMR take enforcement actions. Additionally, on March 16, 2010, the SMGB received notification from Stoel Rives, LLP of pending litigation, in the form of a Verified Petition for Writ of Mandate filed by the Coalition for Responsible Development against the City of Santa Paula. The Petition alleged that the City of Santa Paula violated the California Environmental Quality Act (CEQA) in issuing the Santa Paula Rock TUP without conducting required environmental review and analysis of potentially significant impacts.

After confirming that the SMGB is currently the SMARA lead agency for the City of Santa Paula, and that the subject operation (i.e. the stockpiling, screening, sorting and selling of alluvial material excavated from the Santa Paula Creek channel) is required to comply with SMARA, SMGB staff requested to conduct a site inspection. Such inspection was conducted on May 27, 2010.

Results of May 27, 2010 Site Inspection: Based on observations made at time of the May 27, 2010 Site Inspection, and on review of pertinent documents, the SMGB's inspector determined that approximately 10 acres had been affected by ongoing surface mining activities subject to SMARA. Additionally, the inspector found that no reclamation plan or financial assurance was in place for the areas affected by the Santa Paula Rock surface mining operation. As such, the following violations were noted at time of inspection:

1. Santa Paula Rock is conducting surface mining operations without an approved reclamation plan as required by PRC Section 2770(a).
2. Santa Paula Rock is conducting surface mining operations without an approved financial assurance for reclamation as required by PRC Section 2770(a).

Issuance of Notice of Violation: On June 8, 2010, a Notice of Violation (NOV) was issued by the Executive Officer to Santa Paula Rock for conducting surface mining operations without possession of an approved Reclamation Plan, Financial Assurance, and Permit to Mine, in violation of PRC Section 2770. The NOV specifically required Santa Paula Rock to provide the SMGB with a Reclamation Plan, a FACE and documentation relating to the recently applied for Conditional Use Permit (CUP) issued through the City of Santa Paula. In addition, the NOV stated that until the Operator provides the SMGB with an approved

Reclamation Plan, Financial Assurance and Permit to Mine, they legally may not conduct surface mining operations and should cease immediately any and all mining activities.

On June 8, 2010, the SMGB received from Santa Paula Rock a draft Reclamation Plan for the subject site. Such draft Reclamation Plan included a preliminary FACE as Appendix E.

June 10, 2010, SMGB Regular Business Meeting: At its June 10, 2010, meeting, the SMGB accepted the May 27, 2010 Site Inspection Report as complete, and they also received comments and held discussions pertaining to ongoing activities at the Santa Paula Rock site. Based on these comments and discussions, the SMGB concluded that the current surface mining activities may continue while a Reclamation Plan and FACE that are consistent with SMARA and the SMGB's regulations are being prepared.

Additionally, at their June 10, 2010 meeting, the SMGB moved to direct Santa Paula Rock to provide a proposed Interim FACE for approval consideration at their upcoming July 8, 2010, regular business meeting.

**DISCUSSION:** As mentioned above, on June 8, 2010, the Operator submitted a draft Reclamation Plan for the Santa Paula Rock surface mining operation, which included a proposed FACE as Appendix E. Such FACE was calculated with the assumption that the site would be returned to its pre-existing conditions (i.e. as it appeared prior to initiation of Santa Paula Rock's current activities). SMGB staff conducted a review of the subject FACE on June 15, 2010, and subsequently transmitted suggested revisions to the Operator. The Operator concurred with the suggested revisions, and provided the SMGB with a revised preliminary FACE on June 22, 2010.

The subject FACE proposes to remove the approximately 308,688 cubic yards of stockpiled alluvial material currently occupying the site, and transport it via dump trucks to a future industrial park site that has requested fill material located approximately 1.5 miles away. The total estimated cost for returning the Santa Paula Rock site to its pre-existing condition of an open flat parcel is \$887,168.00. The following table summarizes the recently submitted interim FACE:

**SUMMARY OF INTERIM FINANCIAL ASSURANCE COST ESTIMATE  
SANTA PAULA ROCK SITE**

I.	Direct Costs:	
	Primary Reclamation Activities	\$ 655,704
	Revegetation	\$ -0-
	Plant Structures and Equipment Removal	\$ -0-
	Miscellaneous Costs	\$ -0-
	Monitoring	\$ -0-
	<b>Total Direct Costs</b>	<b>\$ 655,704</b>
II.	Indirect Costs	
	Supervision (4.5%)	\$ 29,507
	Profit/Overhead (9.5%)	\$ 62,292
	Contingencies (7%)	\$ 45,899
	Mobilization (2%)	\$ 13,114
	<b>Total Indirect Cost</b>	<b>\$ 150,812</b>
	<b>Total Direct and Indirect Costs</b>	<b>\$ 806,516</b>
III.	Lead Agency administrative cost (10%)	\$ 80,652
	<b>Total Estimated Interim Cost for Reclamation</b>	<b>\$ 887,168</b>

**CONSIDERATIONS BEFORE THE SMGB:** The SMGB may consider the following actions:

1. Approve as adequate the proposed interim financial assurance cost estimate, without modifications;  
  
[or]
2. Modify the proposed interim financial assurance cost estimate, and then accept it as adequate;

[or]

3. Reject the proposed interim financial assurance cost estimate as inadequate and order it to be redone.

**EXECUTIVE OFFICER'S RECOMMENDATION:** It is the recommendation of the Executive Officer that the proposed interim financial assurance amount as provided by the Operator be approved by the SMGB. The interim FACE has been reviewed for its consistency and completeness in meeting the minimum requirements of SMARA, and the SMGB's regulations and guidelines. Based on the Executive Officer's knowledge of existing site conditions, and of site conditions prior to the initiation of Santa Paula Rock's current activities, the proposed interim FACE is deemed adequate.

**SUGGESTED MOTION LANGUAGE:**

To approve the proposed Interim Financial Assurance Amount:

*Mr. Chairman, in light of the information before the State Mining and Geology Board today, I move that the Board approve an interim financial assurance amount of \$887,168.00 for the Santa Paula Rock surface mining operation, CA Mine ID # to be determined, located in the City of Santa Paula, as such amount is considered adequate, based on current site conditions, to reclaim the site in accordance with the minimum requirements of SMARA and the SMGB's regulations. Such amount should be provided to the SMGB no later than 30 days from this date.*

Respectfully submitted:

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Stephen M. Testa  
Executive Officer

## **EXHIBITS**

- Exhibit A**                      **Proposed Interim Financial Assurance Cost Estimate  
(Appendix E of draft Reclamation Plan for Santa Paula Rock  
site)**
- Exhibit B**                      **Pre-existing site photographs (Appendix B of draft  
Reclamation Plan for Santa Paula Rock site)**
- Exhibit C**                      **May 27, 2010 Site Inspection Report prepared by SMGB staff**

